

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 532 OF 2003.

Smt. Maria Flora Esperance
Rodrigues D'Souza,
resident of Cortalim,
Mormugao, Goa. ... Petitioner.

VERSUS

1. Shri Tome Isidorio Carvalho,
resident of Nauta, Cortalim,
Goa.
2. Fabrica de Igreja Church
Cortalim, represented by its
duly constituted Power of
Attorney, Father Parish
Priest Jose Dias, resident of
Cortalim Church.
3. Shri Pedro Dias Peter Dias,
resident of Cortalim, Goa.
4. Shri Laurente Valles,
resident of Cortalim, Goa.
5. Shri Ceasar Francisco D'Souza,
resident of Cortalim, Goa. ... Respondents.

Shri S.S. Kantak, Advocate for the Petitioner.

Shri E.O. Mendes, Advocate for the Respondent No.1.

CORAM: A.M. KHANWILKAR, J.

DATE: 4TH DECEMBER, 2004.

ORAL ORDER:

Heard both sides.

This petition under Article 227 of the
Constitution of India takes exception to the
Judgment and Order passed by the Civil Judge J.D.,
Vasco-da-Gama, Goa, dated 7th October, 2003 below

Exh.14 in R.C.S. No.49/03/D. By this Order the Trial Court has allowed the application filed by respondent No.1 for impleadment as defendant in the Suit. That application was filed by the Respondent No.1, on the allegation that the Suit as filed between the petitioner and the other respondents was a collusive suit. The main apprehension of Respondent No.1 was that the plaintiff in that Suit was seeking relief particularly relief (c) and if the same was to be granted in view of the collusive stand taken by the respondents/defendants in the suit, that would affect his remedy which is already pending before the appropriate authority under the provisions of the Land Revenue Code.

2. After hearing the counsel for some time, the counsel for the respondent No.1 submitted that the Respondent No.1 would withdraw application (Exh.14) if it was clarified that the Land Revenue Authority examining the proceedings under the Land Revenue Code will decide the said proceedings on its own merit without being influenced by any of the observations in the Suit pending between the petitioner and Respondents No.2 to 5.

3. Mr. Kantak for the petitioner/plaintiff, submits that the petitioner will have no objection

for keeping that question open.

4. In the circumstances, Respondent No.1 through his counsel, has made a request for permission to withdraw Exh.14 as was filed before the Trial Court by keeping the aforesaid aspects open. That liberty is granted. In view of this Order, it is not necessary to go into the correctness of the decision which is impugned in this Writ Petition.

5. Petition is disposed of in the above terms. As application (Exh. 14) below which the impugned Order has been passed having been withdrawn by Respondent No.1, the Order as passed which is subject matter of challenge in this Writ Petition would not survive.

A.M. KHANWILKAR, J.

sl.